

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 299 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PURSHOTTAMDAS H THAKKAR

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

MR KB PUJARA for Petitioner

MR HS MUNSHAW for Respondent No. 1, 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 16/01/99

ORAL JUDGEMENT

Present petition has been preferred by a retired Circle Inspector for the benefits of pay fixation arising out of an earlier order of this Court made on Special Civil Application No. 7924 of 1991 decided on 9th February, 1993. The facts leading to the present petition are as under :

1. The petitioner was earlier appointed as Secretary

of Jholapur Gram Panchayat on 1st February, 1955 for a monthly salary of Rs. 40/-. Upon integration of the services, he was appointed as Talati cum Mantri in the lower grade with effect from 1st October, 1961. It appears that one Mr. A.G.Shah who was appointed as Talati of the Odhav Gram Panchayat on 1st April, 1956, upon integration of services was appointed as Talati cum Mantri in the upper grade and was considered senior to the petitioner. After publication of the seniority list, the petitioner lodged objection which was accepted by the competent authority and under order dated 15th December, 1987, the petitioner was given seniority above the above referred Mr. A.G.Shah. Pursuant to the said order, the petitioner lodged claim for selection grade as well as for deemed promotion. Said claims were accepted by the respondent No. 1 and on 11th September, 1991, respondent No. 1 made an order granting selection grade to the petitioner with effect from 1st July, 1979 and deemed promotion as Circle Inspector with effect from 1st July, 1982. He made further order that the ancillary benefit flowing from the said orders shall be admissible for the purpose of pensionary benefits alone. Feeling aggrieved, the petitioner preferred above referred Special Civil Application No. 7924 of 1991 before this Court. The petitioner claimed that in view of his seniority vis-a-vis Mr. A.G.Shah, he should have been given upper grade in the integrated services with effect from 1st October, 1961. This Court (Coram : Mr. Justice C.K.Thakker), under his judgment and order dated 9th February, 1993, rejected the claim of the petitioner for placement in the upper grade on the ground of delay and laches. However, the claim for actual benefits arising from the grant of selection grade as well as deemed promotion as Circle Inspector was allowed. Pursuant to the said order, respondent No. 2 made two orders on 24th January, 1994. Under the first order, the petitioner's pay with effect from 1st July, 1979 was refixed in the selection grade. The arrears were worked out and the same were ordered to be paid alongwith interest as directed by this Court. Under the second order, the petitioner's pay on promotion as Circle Inspector with effect from 1st July, 1982 was refixed and the arrears of salary alongwith interest was ordered to be paid.

2. The petitioner, however, appears to be dissatisfied with these orders of pay fixation. It is the claim of the petitioner that on 1st July, 1979, upon placement in the selection grade, the petitioner's pay ought to have been fixed at the same stage as was being paid to Mr. A.G.Shah and similarly, upon his deemed promotion with effect from 1st January, 1982, the

petitioner ought to have been given the same pay as was given to Mr. A. G. Shah. However, actually, even after such pay fixation, the petitioner's pay is lower than the pay of Mr. A.G.Shah which has resulted into further loss of salary. In short, the petitioner's claim is essentially that of stepping up of pay which has been refused by respondent No. 1. Feeling aggrieved, the petitioner has preferred this petition.

3. Mr. Pujara has contended that the petitioner's claim for seniority over Mr. A.G.Shah has been accepted and accordingly, the petitioner has also been given benefits of selection grade with effect from 1st July, 1979 and promotion with effect from 1st January, 1982. Having given these benefits, it is the duty of the concerned authorities to give benefits of stepping up of pay with effect from 1st July, 1979 and 1st January, 1982 respectively. He has contended that this anomaly has arisen on account of wrong fixation of seniority of the petitioner. Had the petitioner been given correct seniority in the year 1961, he would have been placed in the upper grade with effect from 1st October, 1961 and would have received the same salary as that of Mr. A.G.Shah right from 1st October, 1961 and would have received higher pay in the selection grade with effect from 1st July, 1979 and also upon promotion with effect from 1st January, 1982. Mr. Pujara has, therefore, submitted that though the petitioner's claim for upper grade with effect from 1st October, 1961 has been rejected by this Court on the ground of delay and laches, benefits of pay fixation should have been given at least from 1st July, 1979 and 1st January, 1982 respectively as the said claims have been accepted in principle.

4. I am unable to agree with the contention raised by Mr. Pujara. What the petitioner claims is really not the implementation of the order earlier made by this Court on 9th February, 1993. The claim made in this petition is necessarily the consequential benefits of the upper grade which benefit was not conferred upon the petitioner on 1st October, 1961 or thereafter. The claim for placement in the upper grade made before this Court has been rejected in no uncertain terms. In my view, since the claim for upper grade has been rejected by this Court earlier, the petitioner's claim for consequential benefits of upper grade cannot be accepted. Any such claim would be barred by principle of Constructive Res Judicata.

5. There being no other claim made in this petition, in view of the above discussion, the petition is

dismissed. Rule is discharged. There shall be no order
as to costs.

16.1.1999. (Ms. R.M.Doshit,J.)

Vyas